

HSLRB means the Homeland Security Labor Relations Board.

Labor organization means an organization composed in whole or in part of Federal employees, in which employees participate and pay dues, and which has as a purpose the dealing with the Department concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by the Department; or

(4) An organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

Management official means an individual employed by the Department in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department or who has the authority to recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.

Professional employee has the meaning given that term in 5 U.S.C. 7103(a)(15).

Supervisor means an individual employed by the Department having authority in the interest of the Department to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

§ 9701.505 Coverage.

(a) *Employees covered.* This subpart applies to eligible DHS employees, subject to a determination by the Secretary or designee under § 9701.102(b), except as provided in paragraph (b) of this section. DHS employees who would otherwise be covered by 5 U.S.C. chapter 71 are eligible for coverage under this subpart. In addition, this subpart applies to an employee whose employment has ceased because of an unfair labor practice under § 9701.517 of this subpart and who has not obtained any other regular and substantially equivalent employment.

(b) *Employees excluded.* This subpart does not apply to—

(1) An alien or noncitizen of the United States who occupies a position outside the United States;

(2) A member of the uniformed services as defined in 5 U.S.C. 2101(3);

(3) A supervisor or a management official;

(4) Any person who participates in a strike in violation of 5 U.S.C. 7311;

(5) Employees of the United States Secret Service, including the United States Secret Service Uniformed Division;

(6) Employees of the Transportation Security Administration; or

(7) Any employee excluded pursuant to § 9701.514 or any other legal authority.

§ 9701.506 Impact on existing agreements.

(a) Any provision of a collective bargaining agreement that is inconsistent with this part and/or its implementing directives is unenforceable on the effective date of coverage under the applicable subpart or directive. In accordance with procedures and time limits established by the HSLRB under § 9701.509, an exclusive representative may appeal to the HSLRB the Department's determination that a provision is unenforceable. Provisions that are identified by the Department as unenforceable remain unenforceable unless held otherwise by the HSLRB on appeal. The Secretary or designee, in his or her sole and exclusive discretion, may continue all or part of a particular provision(s) with respect to a specific category or categories of employees

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and may cancel such continued provisions at any time; such determinations are not precedential.

(b) Upon request by an exclusive representative, the parties will have 60 days after the effective date of coverage under the applicable subpart and/or implementing directive to bring into conformance those remaining negotiable terms directly affected by the terms rendered unenforceable by the applicable subpart and/or implementing directive. If the parties fail to reach agreement by that date, they may utilize the negotiation impasse provisions of § 9701.519 to resolve the matter. Agreements reached under this section are subject to approval under § 9701.515(d). Nothing in this paragraph will delay the effective date of an implementing directive.

§ 9701.507 Employee rights.

Each employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee must be protected in the exercise of such right. Except as otherwise provided under this subpart, such right includes the right—

(a) To act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and

(b) To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this subpart.

§ 9701.508 Homeland Security Labor Relations Board.

(a) *Composition.* (1) The Homeland Security Labor Relations Board is composed of at least three members who will be appointed by the Secretary for terms of 3 years, except that the appointments of the initial HSLRB members will be for terms of 2, 3, and 4 years, respectively. The Secretary may extend the term of any member beyond 3 years when necessary to provide for an orderly transition and/or appoint

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the member for an additional term. The Secretary, in his or her sole and exclusive discretion, may appoint additional members to the HSLRB; in so doing, he or she will make such appointments to ensure that the HSLRB consists of an odd number of members.

(2) Members of the HSLRB must be independent, distinguished citizens of the United States who are well known for their integrity and impartiality. Members must have expertise in labor relations, law enforcement, or national/homeland or other related security matters. At least one member of the Board must have experience in labor relations. Members must be able to acquire and maintain an appropriate security clearance. Members may be removed by the Secretary on the same grounds as an FLRA member.

(3) An individual chosen to fill a vacancy on the HSLRB will be appointed for the unexpired term of the member who is replaced.

(b) *Appointment of the Chair.* The Secretary, at his or her sole and exclusive discretion, will appoint one member to serve as Chair of the HSLRB.

(c) *Appointment procedures for non-Chair HSLRB members.* (1) The appointments of the two non-Chair HSLRB members will be made by the Secretary after he or she considers any lists of nominees submitted by labor organizations that represent employees in the Department of Homeland Security.

(2) The submission of lists of recommended nominees by labor organizations must be in accordance with timelines and requirements set forth by the Secretary, who may provide for additional consultation in order to obtain further information about a recommended nominee. The ability of the Secretary to appoint HSLRB members may not be delayed or otherwise affected by the failure of any labor organization to provide a list of nominees that meets the timeframe and requirements established by the Secretary.

(d) *Appointment of additional non-Chair HSLRB members.* If the Secretary determines that additional members are needed, he or she may, subject to the criteria set forth in paragraph